

How to amend a contract of employment ?

The constantly changing economic context means that companies have to adapt rapidly: the amendment of the contract of employment is a means that can help them.

The contract of employment consists of the provision of labour against remuneration under the line authority of an employer. In principle, each party has to abide by the terms of the contract. Nevertheless, the legislation authorises amendments under certain conditions.

By mutual agreement

The parties are entitled to amend what they agreed at a given moment, by means of an amendment to the contract of employment.

Attention! Certain changes are prohibited, e.g. extending the trial period.

Unilateral amendment

The employer is vested with the line authority. He is at full liberty to organise his company and may amend the clauses of the employment contract of his employees, provided that:

- The amendment concerns a secondary clause of the contract of employment, OR
- The amendment is in the employee's favour.

A distinction must therefore be drawn between a key clause and a secondary clause, as well as a favourable clause and an unfavourable clause.

Key/Secondary

The key clauses are those that encourage the employee to conclude the contract of employment, e.g. pay (amount and structure), working time, workplace (except in the case of a mobility clause), schedules, position, etc.

Every amendment must be assessed on a case-by-case basis: for example, the position may be different, but the responsibilities remain as important and the required qualifications equivalent, or in the case of a change of department, the position remains identical, etc.

Favourable/Unfavourable

Examples drawn from case law: a pay rise is a key and favourable change; the replacement of the reimbursement of expenses by a company car is a key and unfavourable change; the replacement of meal vouchers by free meals in the canteen is a key and unfavourable change.

Unilateral amendment of a secondary clause of the contract of employment OR of a key clause in favour of the employee

The procedure is simple: it suffices to draw up an amendment to the contract of employment at the latest at the time of the desired effective date. It is also possible to send a letter to the employee mentioning the change, with or without acknowledgement of receipt on his or her part.

Unilateral amendment of a key clause of the contract of employment that is unfavourable for the employee

The procedure to follow is similar to that for a dismissal (Article L 121-7 of the Labour Code):

- Prior interview, if the company has more than 150 employees, or according to the provisions of the collective labour agreement
- Notification of the amendment by registered letter or by hand-delivered letter with acknowledgement of receipt
- When? Immediately, if the amendment is justified by gross negligence on the part of the employee or after a 2-, 4- or 6-month notice, depending on the employee's seniority
- The employee will have one month within which to request the reasons that justify the amendment
- The employer will have one month to provide said reasons.

If the procedure is not followed by the employer, the amendment cannot enter into force. The employee may ask that the amendment be voided. If the employee resigns, his resignation shall be considered as unfair dismissal entitling him to pay in lieu of notice and severance pay (where appropriate), and even damages.

If the employer follows the procedure, the amendment may be imposed on the employee unilaterally. If the employee refuses, he has to resign. His resignation shall be considered as dismissal. He could take court action for unfair dismissal.

Employees protected against dismissal (pregnant women, employee representatives, etc.) may not be subjected to a unilateral change of their working conditions.

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